

EXHIBIT 1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

4 T. LEVY ASSOCIATES, INC. : CIVIL DOCKET FOR CASE
5 : NO. 16-4929
6 -VS- :
7 MICHAEL KAPLAN, ET AL :
8

9 PHILADELPHIA, PA.

10 JUNE 29, 2017

11 BEFORE HONORABLE MARK A. KEARNEY

12 JURY TRIAL - DAY 4

13 APPEARANCES:

14 FOR THE PLAINTIFF: SPECTOR GADON ROSEN PC
15 BY: DANIEL J. DUGAN, ESQUIRE
16 AND BRUCE BELLINGHAM, ESQUIRE
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1 OF EACH ONE. THERE ARE MANY, MANY, MANY, MANY CASES
2 THAT ARE WON WITHOUT A WITNESS OR, FOR EXAMPLE, WITH ONE
3 WITNESS AGAINST TEN. IT'S WHO YOU BELIEVE, NOT HOW MANY
4 ARE CALLED OR BY WHOM.

5 YOU ARE ALSO TO CONSIDER WHETHER ANY --
6 YOU ARE ALSO TO CONSIDER WHETHER ONE PARTY OR THE OTHER
7 RELIED UPON AN EXHIBIT OR IF YOU SAW ANY DESIGNATION ON
8 EXHIBITS THE PARTY OFFERED. IN OTHER WORDS, JUST
9 BECAUSE SOMEBODY PUT UP THE EXHIBIT DOES NOT MEAN IT
10 SUPPORTS THEM OR IT DOESN'T. YOU HAVE TO DECIDE WHAT
11 THAT EXHIBIT MEANS. NOT SIMPLY, OH, PLAINTIFF
12 INTRODUCED THAT OR DEFENDANT INTRODUCED THAT, THEREFORE,
13 IT MUST BE IN FAVOR OF THEM. I DON'T KNOW THAT. THAT'S
14 UP TO YOU.

15 YOU HEARD THE EXPERT TESTIMONY OF
16 MR. ANDERSON AND MR. BRULENSKI IN THIS CASE. EXPERT
17 TESTIMONY IS JUST LIKE WITNESS TESTIMONY. YOU HAVE TO
18 CONSIDER THEIR QUALIFICATIONS, THEIR REASONS FOR THEIR
19 CONCLUSIONS, THE RELIABILITY AND INFORMATION, AS WELL AS
20 ALL OF THE FACTORS I TALKED ABOUT FOR ANY OTHER WITNESS.
21 YOU GIVE WHATEVER WEIGHT OR CREDIT YOU THINK IS
22 APPROPRIATE, JUST LIKE ALL OF THE EVIDENCE IN THE CASE.

23 IN DECIDING WHETHER TO ACCEPT OR RELY
24 UPON THESE ACCOUNTANTS' TESTIMONY, YOU CAN CONSIDER ANY
25 BIAS THEY MAY HAVE, INCLUDING WHETHER THEY ARE GETTING

1 PAID TO BE HERE, WHETHER THEY HAVE BEEN PAID IN THE
2 FUTURE FOR ASSISTING COUNSEL OR THE PARTIES, AND WHETHER
3 THEY MAKE A LARGE PORTION OF THEIR INCOME FROM
4 TESTIFYING IN COURT.

5 A DEPOSITION, I JUST TOLD YOU, IS A SWORN
6 STATEMENT GIVEN OUTSIDE MY PRESENCE AND YOURS. IT'S FOR
7 THE EASE OF WITNESSES THAT CAN'T BE HERE, SO WE TAKE A
8 DEPOSITION. IT'S UNDER OATH. DEPOSITION TESTIMONY, YOU
9 CAN TELL THE SAME CONSIDERATION AS ANY OTHER TESTIMONY.
10 WE PREFER LIVE TESTIMONY, BUT SOMETIMES YOU CAN'T BE
11 HERE.

12 NOW, I'M GOING TO TELL YOU -- THAT TELLS
13 YOU WHAT THE RULES ARE. NOW I AM GOING TO TELL YOU
14 ABOUT THE CASE AND WHAT THE RULES ARE HERE. I WILL
15 DETERMINE -- I WILL DESCRIBE THE TERM "PREPONDERANCE OF
16 THE EVIDENCE," WHICH IS THE STANDARD BY WHICH T. LEVY
17 ASSOCIATES MUST PROVE ITS CLAIMS, AND THEN I WILL
18 DESCRIBE T. LEVY ASSOCIATES' CLAIMS AND THE DAMAGES IT
19 CLAIMS ITS ENTITLED TO, TO THE EXTENT YOU FIND IT'S
20 PROVED HIS CLAIMS.

21 SO MADAM DEPUTY NOW HAS THE VERDICT SLIP.
22 I AM GOING TO ASK HER TO HAND EACH OF YOU THE VERDICT
23 SLIP. THIS IS THAT OPEN-BOOK TEST I WAS TALKING ABOUT.
24 DON'T GET DISCOURAGED BY THE FACT THERE'S A LOT OF
25 QUESTIONS. IT'S JUST A LOT OF QUESTIONS BECAUSE THERE'S

1 THREE DEFENDANTS AND LOTS OF CHARGES, LOTS OF CLAIMS.

2 THANK YOU.

3 YOU ARE WELCOME TO TAKE NOTES, IF YOU
4 WISH, ON THAT FORM. BY WAY OF PREVIEW, AT THE END OF
5 THE DELIBERATIONS, I WILL ONLY HAVE ONE FORM. THE OTHER
6 SEVEN WILL BE DESTROYED OR WE'LL GIVE YOU A NEW ONE IF
7 YOU ALREADY WROTE ON IT. THE FOREPERSON WILL COME BACK
8 WITH THE FINAL FORM AND TELL US THE VERDICT IN OPEN
9 COURT.

10 OKAY. THE FIRST ISSUE IS PREPONDERANCE
11 OF THE EVIDENCE. WHAT DOES THAT MEAN? THAT'S NOT A
12 WORD WE THROW AROUND EVERY DAY. WHAT IT MEANS IS THAT
13 T. LEVY ASSOCIATES HAS TO PROVE TO YOU IN LIGHT OF ALL
14 THE EVIDENCE THAT WHAT IT CLAIMS IS MORE LIKELY SO THAN
15 NOT SO. TO SAY IT DIFFERENTLY, IF YOU WERE TO PUT ALL
16 OF THE EVIDENCE FAVORABLE TO T. LEVY ON ONE SIDE AND ALL
17 THE EVIDENCE FAVORABLE TO EACH DEFENDANT SEPARATELY --
18 DO YOU SEE HOW THAT SHEET SAYS: AS TO MICHAEL KAPLAN,
19 AS TO NINA KAPLAN, AS TO BLC? THAT'S BECAUSE YOU HAVE
20 TO DO THEM SEPARATELY. IT'S NOT FAIR TO ANY ONE TO BE
21 STANDING HERE FOR THE OTHER. OKAY.

22 SO FOR EACH ONE YOU HAVE TO WEIGH IT.

23 T. LEVY VERSE MICHAEL. T. LEVY VERSE NINA. T. LEVY
24 VERSE BLC. NOW, T. LEVY'S JOB IS TO HAVE TO WIN, TO
25 SUCCEED, TO CONVINCE YOU, IT MUST HAVE THE SCALES SLIP

1 EVER SO SLIGHTLY -- TIP EVER SO SLIGHTLY TO ITS SIDE.
2 IF YOU FIND THAT THE SCALES ARE EQUAL, T. LEVY HAS NOT
3 PERSUADED YOU. HOWEVER, IF THEY TIP EVER SO SLIGHTLY,
4 WELL, WE SAY 51/49, RIGHT, EVER SO SLIGHTLY, THEN
5 T. LEVY HAS MET ITS BURDEN OF PROOF BY A PREPONDERANCE
6 OF THE EVIDENCE. THIS IS NOT BEYOND A REASONABLE DOUBT.
7 THIS IS NOT CLEAR AND CONVINCING. NEITHER OF WHICH ARE
8 IN THIS CASE RIGHT NOW. NEITHER ONE MATTER.
9 PREPONDERANCE OF THE EVIDENCE.

10 CONVERSELY, TO THE EXTENT THE DEFENSE HAS
11 SAID SOMETHING TO YOU WHICH THEY CLAIM IS A REASON WHY
12 THEY SHOULD WIN, NOT JUST ACCUSING THEM, NOT JUST SAYING
13 THE PLAINTIFF HAS NOT PROVEN ITS CASE, BUT ALSO CLAIMING
14 ITS CLAIM OR ANY DEFENSE, IF THEY DON'T PROVE IT TO YOU
15 BY A PREPONDERANCE, THEN THEY HAVE NOT MET THEIR
16 STANDARD OF PROOF. YOU ARE TO CONSIDER THE TESTIMONY OF
17 ALL WITNESSES IN DOING THAT, ALL DOCUMENTS, AND CONSIDER
18 THEM AS TO EACH PERSON. T. LEVY VERSUS EACH PERSON
19 INDEPENDENTLY. THAT'S WHY YOU HAVE THREE CATEGORIES IN
20 YOUR VERDICT SLIP.

21 NOW, THE FIRST CLAIM YOU SEE ON YOUR
22 SHEET, GOING BACK TO OUR OPEN-BOOK EXAM KIND OF IDEA,
23 THE FIRST CLAIM IS CALLED RACKETEER INFLUENCE AND
24 CORRUPT ORGANIZATIONS ACT. THE WORD FOR THAT IS RICO.
25 IT'S R-I-C-O. NOW, I AM GOING TO USE THE WORD "RICO"

1 FOR SHORT, BUT THAT'S WHAT THE ACT IS. IT'S A
2 CONGRESSIONAL ACT. IT'S A STATUTE.

3 FOR T. LEVY ASSOCIATES TO RECOVER AGAINST
4 EACH -- AGAINST THE DEFENDANTS UNDER RICO, YOU MUST FIND
5 THAT T. LEVY ASSOCIATES PROVED THE FOLLOWING FIVE
6 ELEMENTS, FIVE THINGS, BY A PREPONDERANCE. FIRST -- AND
7 I AM GOING TO EXPLAIN EACH OF THESE TO YOU, BECAUSE I'M
8 GOING TO RUN THROUGH THEM AND I'M GOING TO EXPLAIN WHAT
9 EACH MEANS.

10 FIRST, THE EXISTENCE OF AN ENTERPRISE.
11 SECOND, THE ENTERPRISE ENGAGED IN OR HAD SOME EFFECT ON
12 INTERSTATE OR FOREIGN COMMERCE. THIRD, THE DEFENDANTS
13 WERE EMPLOYED BY OR ASSOCIATED WITH THIS ALLEGED
14 ENTERPRISE, FOURTH, THE DEFENDANTS CONDUCTED THE
15 ENTERPRISE'S AFFAIRS OR PARTICIPATED EITHER DIRECTLY OR
16 INDIRECTLY IN THE CONDUCT OF THE ENTERPRISE'S AFFAIRS.
17 AND FIFTH, THE DEFENDANTS PARTICIPATED THROUGH A PATTERN
18 OF RACKETEERING ACTIVITY.

19 NOW, I KNOW THAT EVERY ONE OF YOUR MINDS
20 IS, WELL, WE BETTER GET THAT INSTRUCTION WHEN WE GO BACK
21 THERE. BUT I AM STILL GOING TO GIVE IT TO YOU PIECE BY
22 PIECE WHAT THEY MEAN. SOMETIMES YOU NEED TO HEAR IT.

23 NOW, FIRST, ENTERPRISE. DO YOU REMEMBER
24 THE FIRST THING I SAID, ENTERPRISE? MUST PROVE THE
25 EXISTENCE OF AN ENTERPRISE. AN ENTERPRISE CAN BE A

1 LEGAL ENTITY, SUCH AS A CORPORATION OR PARTNERSHIP, OR
2 IT CAN BE A GROUP OF PERSONS THAT ARE ASSOCIATED IN
3 FACT, ALTHOUGH THEY ARE NOT A LEGAL ENTITY.

4 THIS CASE, AS YOU MAY HAVE HEARD,
5 INVOLVES A SECOND CATEGORY OF INDIVIDUALS. THAT IS THE
6 ALLEGATION IS AN ENTERPRISE OF INDIVIDUALS ASSOCIATED IN
7 FACT. BUT WE CALL IT AN ASSOCIATION IN FACT ENTERPRISE.

8 T. LEVY ASSOCIATES ALLEGES THE ENTERPRISE
9 CONSISTS OF ALL THE DEFENDANTS, THAT EXISTS FOR THE
10 PURPOSES OF MISAPPROPRIATING THE ACT OF T. LEVY
11 ASSOCIATES FOR THEIR OWN USE, PRIMARILY IN THE OPERATION
12 OF BLC.

13 IN ORDER TO FIND THE EXISTENCE OF AN
14 ASSOCIATION OF FACT ENTERPRISE, YOU HAVE TO FIND T. LEVY
15 PROVED, FIRST, THAT THIS GROUP HAD A PURPOSE AND A
16 LONGEVITY SUFFICIENT FOR THE MEMBERS OF THE GROUP TO
17 PURSUE ITS PURPOSE, SECOND, THE GROUP HAD AN ONGOING
18 ORGANIZATION, WHETHER FORMAL OR INFORMAL, WITH SOME SORT
19 OF FRAMEWORK FOR CARRYING OUT ITS OBJECTIVES, AND,
20 THIRD, THERE WAS A RELATIONSHIP AMONG THE MEMBERS OF THE
21 GROUP, AND THE MEMBERS OF THE GROUP FUNCTIONED AS A
22 CONTINUING UNIT TO ACHIEVE A COMMON PURPOSE.

23 THE EVIDENCE THAT SHOWS A PATTERN OF
24 RACKETEERING ACTIVITY MAY BE CONSIDERED IN DETERMINING
25 WHETHER T. LEVY ASSOCIATES PROVED AN ASSOCIATION OF FACT

1 ENTERPRISE, AND PROOF OF A PATTERN OF RACKETEERING
2 ACTIVITY MAY BE SUFFICIENT FOR YOU TO INFER THE
3 EXISTENCE OF AN ASSOCIATION OF FACT ENTERPRISE. T. LEVY
4 ASSOCIATES NEED NOT PROVE THE GROUP HAD A HIERARCHAL
5 STRUCTURE OR CHAIN OF COMMAND. DECISIONS MAY HAVE BEEN
6 MADE ON THAT BASIS BY ANY NUMBER OF METHODS.

7 T. LEVY ASSOCIATES ALSO NEED NOT PROVE
8 THAT MEMBERS OF THE GROUP HAD FIXED ROLES. DIFFERENT
9 MEMBERS CAN DO DIFFERENT ROLES AT DIFFERENT TIMES.
10 T. LEVY ASSOCIATES NEED NOT PROVE THE GROUP WAS A
11 BUSINESSLIKE ENTITY OR HAD A NAME OR REGULAR MEETINGS OR
12 RULES AND REGULATIONS, THINGS LIKE THAT. AN ENTERPRISE
13 IS ALSO NOT LIMITED TO A GROUP WHOSE CRIMES ARE
14 SOPHISTICATED, DIVERSE, COMPLEX, OR UNIQUE.

15 THE SECOND ISSUE THAT WE TALKED ABOUT AND
16 I TALKED ABOUT THOSE FIVE THINGS IS THEY MUST BE ENGAGED
17 IN OR ACTIVITIES WHICH AFFECT INTERSTATE OR FOREIGN
18 COMMERCE. T. LEVY HERE MUST SHOW THE THE ENTERPRISE
19 ENGAGED IN OR HAD AN AN EFFECT ON INTERSTATE OR FOREIGN
20 COMMERCE. TO DO THAT, TO ENGAGE IN OR HAVE AN EFFECT ON
21 INTERSTATE FOREIGN COMMERCE MEANS THE ENTERPRISE EITHER
22 ENGAGED IN OR HAD AN EFFECT ON COMMERCE BETWEEN TWO OR
23 MORE STATES OR COMMERCE BETWEEN A STATE AND FOREIGN
24 COUNTRY.

25 AN ENTERPRISE ENGAGED IN INTERSTATE OR

1 FOREIGN COMMERCE WHEN IT IS ITSELF DIRECTLY ENGAGED IN
2 THE PRODUCTION, DISTRIBUTION, OR ACQUISITION OF
3 SERVICES, MONEY, GOODS OR OTHER PROPERTY IN INTERSTATE
4 OR FOREIGN COMMERCE. ALTERNATIVELY, AN ENTERPRISE'S
5 ACTIVITY'S AFFECT INTERSTATE OR FOREIGN COMMERCE IF ITS
6 ACTIVITIES IN ANY WAY INTERFERED WITH, CHANGED, OR
7 ALTERED THE MOVEMENT OR TRANSPORTATION OR FLOW OF GOODS,
8 MERCHANDISE, OR OTHER PROPERTY BETWEEN OR AMONG TWO OR
9 MORE STATES AND BETWEEN A STATE AND FOREIGN COUNTRY.

10 T. LEVY ASSOCIATES MUST PROVE THAT THE ENTERPRISE
11 ACTIVITY HAD SOME EFFECT ON COMMERCE, NO MATTER HOW
12 MINIMAL OR SLIGHT.

13 THEY DON'T HAVE TO -- IT DOES NOT HAVE TO
14 PROVE TO YOU THAT THE PATTERN OR INDIVIDUAL ACTS OF
15 RACKETEERING ACTIVITY THEMSELVES AFFECTED INTERSTATE OR
16 FOREIGN COMMERCE. RATHER IT IS THE ENTERPRISE AND
17 ACTIVITY CONSIDERED AS A WHOLE THAT MUST BE SHOWN TO
18 HAVE THAT EFFECT. ON THE OTHER HAND, THIS EFFECT ON
19 INTERSTATE OR FOREIGN COMMERCE MAY BE ESTABLISHED
20 THROUGH THE EFFECT OF CAUSED BY THE PATTERN OR
21 INDIVIDUAL ACT OF RACKETEERING ACTIVITY.

22 THIRD, FORESEEABLE RICO, T. LEVY
23 ASSOCIATES MUST PROVE THAT THE DEFENDANTS WERE EMPLOYED
24 BY OR ASSOCIATED WITH THE ALLEGED ENTERPRISE. TO PROVE
25 THE DEFENDANTS WERE EITHER EMPLOYED BY OR ASSOCIATED

1 WITH ENTERPRISE, T. LEVY ASSOCIATES MUST PROVE BY A
2 PREPONDERANCE OF THE EVIDENCE DEFENDANTS WERE CONNECTED
3 TO THE ENTERPRISE IN SOME MEANINGFUL WAY, AND THEY KNEW
4 OF THE EXISTENCE OF THE ENTERPRISE AND THE GENERAL
5 NATURE OF ITS ACTIVITIES.

6 THE FOURTH ISSUE ON CIVIL RICO, T. LEVY

7 ASSOCIATES MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE

8 DEFENDANTS PARTICIPATED DIRECTLY OR INDIRECTLY IN THE

9 CONDUCT OF THE AFFAIRS OF THE ENTERPRISE. TO DO THIS,

10 THEY MOST SHOW THERE IS A CONNECTION BETWEEN THE

11 DEFENDANTS AND THE CONDUCT OF THE AFFAIRS OF THE

12 ENTERPRISE AND THE DEFENDANTS TOOK SOME PART IN THE

13 OPERATION OR MANAGEMENT OF THE ENTERPRISE OR HAD SOME

14 ROLE IN DIRECTING THE ENTERPRISE'S AFFAIRS.

15 THE FIFTH ELEMENT FOR RICO, THE LAST ONE,
16 IS T. LEVY ASSOCIATES MUST PROVE THE DEFENDANTS
17 PARTICIPATED IN A CONDUCT OF THE ENTERPRISE AFFAIRS
18 THROUGH A PATTERN OF RACKETEERING ACTIVITY. TO DO THAT,
19 THEY MUST PROVE THE FOLLOWING BY A PREPONDERANCE:

20 FIRST, DEFENDANTS COMMITTED AT LEAST TWO
21 OF THE ALLEGED ACTS OF RACKETEERING ACTIVITY AND THE
22 LAST ACT OF RACKETEERING ACTIVITY OCCURRED WITHIN TEN
23 YEARS AFTER THE COMMISSION OF THE PREVIOUS ACT OF
24 RACKETEERING ACTIVITY.

1 RELATED TO EACH OTHER, MEANING THERE IS A RELATIONSHIP
2 BETWEEN OR AMONG THE ACTS OF RACKETEERING ACTIVITY.
3 ACTS ARE RELATED TO ONE ANOTHER IF THEY HAVE THE SAME OR
4 SIMILAR PURPOSES, RESULTS, PARTICIPANTS, VICTIMS, OR
5 METHODS, OR THEY HAVE A COMMON DISCONTINUING
6 CHARACTERISTIC AND ARE NOT ISOLATED EVENTS.

7 THIRD, THE ACT OF RACKETEERING ACTIVITY
8 AMOUNTED TO OR POSED A THREAT OF CONTINUED UNLAWFUL
9 ACTIVITY, MEANING THE ACTS EXTENDED OVER A SUBSTANTIAL
10 PERIOD OF TIME OR THE ACTS BY THEIR NATURE ARE LIKELY TO
11 BE REPEATED INTO THE FUTURE.

12 AND FOURTH, THE DEFENDANTS CONDUCTED OR
13 PARTICIPATED, DIRECTLY OR INDIRECTLY, IN THE CONDUCT OF
14 THE ENTERPRISE'S AFFAIRS THROUGH THE POWER OF
15 RACKETEERING ACTIVITY.

16 SO, JUDGE, WHAT DOES RACKETEERING
17 ACTIVITY MEAN? RACKETEERING ACTIVITY AS DEFEND BY THE
18 CONGRESS IN THE RICO STATUTE INCLUDES ANY ACTS THAT
19 INVOLVE OR CAN BE CHARGED AS ANY OF A WIDE RANGE OF
20 CRIMES UNDER FEDERAL OR STATE LAW. AN ACT OF
21 RACKETEERING ACTIVITY IS ALSO CALLED A PREDICATE ACT.
22 THAT'S ANOTHER WORD THAT WE USE.

23 TO DETERMINE THERE'S A PATTERN OF
24 RACKETEERING ACTIVITY, YOU MUST CONSIDER ONLY THOSE
25 SPECIFIC RACKETEERING ACTS T. LEVY ASSOCIATES ALLEGED

1 AGAINST DEFENDANTS. IN OTHER WORDS, YOU CAN'T MAKE THEM
2 UP, YOU CAN'T THINK OF SOME OTHER CRIMES. IT HAS TO BE
3 WHAT THEY ARE SAYING THEY DID. YOU CAN'T FIND
4 DEFENDANTS ENGAGED IN A PATTERN OF RACKETEERING ACTIVITY
5 UNLESS YOU UNANIMOUSLY AGREE ON WHICH OF THE ALLEGED
6 PREDICATE ACTS, IF ANY, MADE UP THE PATTERN.

7 FOR EXAMPLE, IF SOME OF YOU FIND THAT THE
8 PREDICATE ACTS ARE A AND B AND OTHERS OF YOU FIND THE
9 PREDICATE ACTS ARE C AND D, THEN YOU DON'T HAVE AN
10 AGREEMENT, AND YOU CAN'T FIND A PATTERN OF PREDICATE
11 ACTIVITY. EVEN IF YOU ALL AGREE THERE IS PREDICATE
12 ACTIVITY, IT HAS TO BE THE SAME ONE.

13 THE RACKETEERING ACTIVITIES THAT ARE
14 ALLEGED HERE BY T. LEVY ASSOCIATES ARE ACTS THAT VIOLATE
15 THE FEDERAL, THAT'S THE UNITED STATES, MAIL AND WIRE
16 FRAUD STATUTES. I HAVE TO EXPLAIN TO YOU THESE STATUTES
17 SO YOU UNDERSTAND WHETHER T. LEVY PROVED TO YOU THAT THE
18 DEFENDANTS VIOLATED THEM AS PREDICATE ACTS.

19 FIRST, THE MAIL FRAUD STATUTE AS A
20 PREDICATE OFFENSE. TO PROVE MAIL FRAUD, T. LEVY
21 ASSOCIATES MUST SHOW THE FOLLOWING: THAT THE DEFENDANTS
22 WILLFULLY AND KNOWINGLY PARTICIPATED IN A SCHEME TO
23 DEFRAUD T. LEVY ASSOCIATES. SECOND, THEY DID SO WITH AN
24 INTENT TO DEFRAUD, AND, THIRD, THEY USED THE U.S. MAIL
25 FOR THE PURPOSE OF EXECUTING THE SCHEME TO DEFRAUD.